

# Reagan changes in information act under scrutiny

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Here is the third in a three-part series on efforts by the Reagan Administration to restrict access to information that has traditionally been considered public.

"This legislation springs from one of our most essential principles: A democracy works best when the people have

all the information that the security of the nation permits. No one should be able to put up curtains of secrecy around decisions which can be revealed without injury to the public interest."

With those words, President Lyndon B. Johnson in 1966 signed into law the federal Freedom of Information Act, passed by Congress to counter a tendency toward se-

crecy in government agencies in the wake of World War II and the Cold War.

Despite a consensus among most of those who use and administer the act that the law has generally worked well, the Reagan Administration has made a number of changes in the way federal agencies respond to information act requests.

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Many who regularly use the act claim those changes, along with amendments to the law being sought by the Administration, constitute a clear signal to bureaucrats to withhold information wherever feasible.

The Administration denies any such intent.

Jonathan C. Rose, an assistant US attorney general, testifying before Congress last April, declared that the Administration "strongly supports the basic purpose and philosophy of the act."

Rose said the changes proposed or implemented by the Justice Department involved only a few specific "narrow problems" such as use of the act by criminals to undermine investigations, inadequate protection of proprietary commercial information and increasing costs to government of processing information act requests.

Information act users, however, claim that various kinds of information, freely available from government sources before 1981, have since been restricted - either through new interpretations of the act or through the imposition of prohibitive fees, sometimes in situations where fees had been waived

entirely in the past.

Said one veteran information act officer at a major federal agency, who declined to be identified: "The flow of information has definitely been diminished... The Administration came in to emasculate the Freedom of Information Act."

## Restrictions are cited

Users of the information act cite a multitude of examples of restrictions on information which has traditionally been available, usually at no cost:

- When Jim Lyon of the Environmental Policy Institute in Washington, D.C., learned last summer that the Interior Department had produced a report documenting that strip-mine operators had failed to pay millions of dollars in reclamation fees, he asked for a copy. Such reports had always been available in the past.

He was told to file an information act request.

When he did, an Interior Department official told him that the agency would charge him \$500 an hour to process his request, he said.

Lyon appealed, saying the rate would be prohibitively expensive for his organization. Interior officials have yet to respond to the appeal he filed last September, citing a large backlog of appeals. "The government is very successful in keeping information from the public by changing its traditional policy of waiving fees," said Lyon. "I find it very alarming."

- Last July, Lee Norrgard, chief investigator for the Better Government Assn., a public-interest group that monitors waste and fraud in government, filed an information act request with the State Department to obtain recently completed audits of US embassies.

At the time, the association was looking into complaints by some ambassadors that they were incurring extraordinary costs in entertaining official US visitors, including junketing congressmen, business executives and other officials.

When he requested a fee waiver, Norrgard said, an information act officer denied the request, stating, "I do not believe the information will primarily benefit the general public." Norrgard appealed the denial on Aug. 22.

In early September, United Press International produced a se-

ries of articles on excessive entertainment expenses at several European embassies. Not long afterward, Frank M. Machak of the State Department denied the fee-waiver appeal, stating in a letter, "There is no demonstration of heightened [public] interest in the expenditure of funds by embassies abroad." At the time the letter was received, the UPI articles had appeared in at least 30 newspapers and had been the subject of a special report on CBS radio.

"This is the first time we've had to sue on this issue," Norrgard said. "Why we're being put through this drill is very disturbing."

- Last November, a Boston-area housing consultant working with a Lowell tenants' organization filed an information act request with the Department of Housing and Urban Development for a developer's financial statement. Those statements have always been available to tenant and community groups who are deciding whether or not to contract with a developer.

A HUD official refused the request, apparently as a result of a December 1982 memorandum from the HUD Washington office which states succinctly: "Until further notice, do not release any more Profit and Loss Statements under the FOIA."

- When Philip Simon of the Center for the Study of Responsive Law filed an information act request last fall with the Occupational Safety and Health Administration for its memorandums on a report by the center which criticized OSHA, he received a copy of one memorandum. An accompanying letter told him that was all the information the agency had on file.

Several weeks later - when Simon was on the telephone with an OSHA employee reviewing the memorandum paragraph by paragraph - he realized material had been deleted from his copy of the memorandum. There was no indication on his copy that deletions had been made. Simon sued the agency three weeks ago, contending it violated the information act by failing to notify him of information which was being withheld.

- Eric Goldschmidt, a reporter for Food Chemical News, had been routinely receiving results of Agriculture Department inspections of meat packing plants.



port last year, he was told he would have to file an information act request. When he did, Agriculture officials turned down the request saying that the inspection reports were part of an investigative file. Goldschmidt subsequently filed suit, won a summary judgment and obtained the reports.

● In May, 1982, the health and safety director of the AFL-CIO requested routine enforcement data from OSHA.

"In the past, we've always gotten this information with no problem and at no charge," said Margaret Seminario, associate director of Occupational Safety, Health and Social Security for the AFL-CIO. "But under the Reagan Administration, the agency has been quite nasty about it."

When the agency did not respond to informal queries, the union filed an information act re-

quest for the reports on worker fatalities.

OSHA responded by saying they did not have the information and that it would cost the union about \$70,000 for the agency to compile it.

"Ultimately," Seminario said, "we did get most of the information. In some cases we had to go through Congressional committees. In others, anonymous sources in the agency provided the material."

"It's interesting that information we were told was not available just happened to become available when Congress demanded it."

● Greg Gordon, a UPI reporter, said when he requested a sample of Medicaid claim forms from the Veterans' Administration for an article on health regulations, he was told it would cost him more than \$64,000.

In a telephone interview, Gordon said he subsequently negotiated a lower fee with the agency. "It took about four months before we reached agreement, and another nine months before the agency processed the request. By that time, I was on to something else and could not get to the story."

● Prof. Barton Bernstein, a historian at Stanford University, cited a change in State Department policy in which the department now charges information act requesters for the time required to review material before deciding whether or not to disclose it.

barred by that decision. . . ." Bernstein said in a telephone interview. "It's clear they're using costs to withhold information."

#### **'Aberrant examples'**

Asked about several of these examples, Kevin Jones of the Justice Department said he could not comment on individual cases with which he was not familiar.

"Obviously we don't have control over an agency's day to day administration of the FOIA. The stories you're telling me sound like aberrant examples," Jones said.

But Jack Taylor, an investigative reporter for the Denver Post who has made extensive use of the information act, disagrees with Jones: "The changes are subtle, but there is a pervasive atmosphere emanating from the top. Because of the atmosphere of secrecy, bureaucrats have become more inclined to keep things private."

Until recently, the impact of Justice Department directives on the information act were not readily detectable, said Eric Glitzenstein, an attorney with the Ralph

Nader-sponsored FOI Clearinghouse who handles a number of suits.

"But now the examples are beginning to rain down," Glitzenstein said. "The signal to FOI officers is clear: Avoid compliance with FOI requests whenever possible. Freedom of Information is being regarded in a much more hostile fashion, to be avoided at all costs."

Jones disputes such allegations, saying, "The charge has been made and, I think, irresponsibly by some. The Department of Justice is dedicated to implementing the act, to reducing backlogs, to make sure information that is public be kept public, and to make government pricing policy more uniform."

#### **Hatch defends amendments**

Added Sen. Orrin Hatch (R-Utah), who led the fight on behalf of the Justice Department's information act amendments in the Senate: "Just as the FOI Act holds the government accountable to an informed electorate, FOIA itself must be held accountable. Since [the act was rewritten in 1974] it has at times frustrated rather than fulfilled its basic mission of insuring government efficiency and informing voters. FOIA has occasionally disrupted vital law enforcement activities and has been misused by businesses who . . . found it a convenient tool for obtaining confidential information about a

ments to the contrary, a number of people who use the information act (only about 10 percent of whom are journalists) believe the Administration's desire to restrict information has been clearly signalled to federal agencies in several ways, including:

● A memorandum in May 1981 from Attorney General William French Smith informing agency heads that the Justice Department would henceforth support in court any agency's decision to withhold information from an information act requester.

● A package of amendments to the act proposed by the Justice Department in late 1981 to significantly expand exemptions under

the act. One proposed exemption would have permitted government agencies to withhold information submitted by companies on race and sex discrimination, dangerous drugs and environmental pollution. The proposed amendments were subsequently watered down in negotiations between Hatch and Sen. Patrick Leahy (D-Vt.), who will co-sponsor a compromise package of amendments in the next session.

● In August 1982, President Ronald Reagan issued an executive order which, among other things, makes it much easier for agencies to reclassify as secret information which had been previously made public.

● In January 1983, Rose ordered agencies to reverse a 10-year practice of waiving fees for most requests which fall into a "public interest" category. Rose's memorandum directs agencies to apply five specific criteria in order to make their own determination of the potential value of information to the public.

#### **Criteria is criticized**

Rep. Glenn English (D-Okla.) said last year that, "These criteria invite an agency to substitute its own judgment for that of the requester. It is inappropriate to use fee waivers in this fashion."

For Leahy, who has been leading the fight in the Senate against the Administration's proposed amendments to the act, the law is "an invaluable tool for turning government accountability from a catchphrase into a reality." He said it has been used to disclose government waste and wrongdoing, expose discrimination and secure data on defective and harmful products.

In a speech last fall before the American Newspaper Publishers Assn., Leahy warned:

"If we let things drift - if important information remains beyond our grasp - we will soon lose the means to effectively criticize government. If we ever lose the means for very long, we will in time find we will lose the right. . . ."

*End of series*

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